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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

REPLY OF PETITIONERS TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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There is no issue of fact in this case. The facts are undisputed. The application by the Court of Appeals of asserted legal principles to undisputed facts is the point here in issue. We contend that this application by the Court of asserted law is in conflict with decisions of other U. S. Courts of Appeal and Courts of last resort of several states.

At the outset of its opinion (App. A, page 2a), the Court of Appeals stated that the only question presented by this appeal is as follows:

"Did the activity of the defendant Brooks in Illinois on June 11 and June 12, 1958, constitute the transacting of *any* (the Court's own italics) of the business out of which this cause of action arose?"

The Court of Appeals thereupon did not hold that "*any*" of the business was not in fact transacted in Illinois. It conceded that "*any* of the business" was transacted in Illinois, in stating that such business which was actually and in fact transacted in Illinois was transacted there because of defendant's "*convenience*", *i. e.*, because he wished on the same trip to also do something else in the state, *i.e.*, to attend a convention.

The Court did not hold and, under the admitted facts, could not hold that the defendant did not in fact transact, in Illinois, "*any* of the business out of which this cause of action arose," because the defendant himself had admittedly requested Hansen to meet him in Chicago "*for the purpose of discussing and negotiating such proposed contract for the sale of his* (*Brooks*') *stock*", which was done. (App. 45). Most of the ultimate contract was negotiated and formally "accepted" by the defendant in Chicago. The basis of the Court's decision is that the business related to the cause of action, which was actually and in fact transacted in Illinois, was transacted there for the "*convenience*" of the defendant, in that he desired on the same trip to do something else in the state, *i.e.*, to attend a convention. The Court held that the fact that such business was transacted in Illinois was, *therefore*, "wholly fortuitous", and *consequently* not within the Statute.

The fact that the Court of Appeals based its decision on the above asserted new principle of law is evidenced by the statement of the Official Reporter immediately preceding the official report of this case in 267 F. 2d

394. The statement of the Court's holding by the Official Reporter is that "a meeting of the parties *for purpose of discussing sale, arranged to be held* in Chicago *for convenience*, in that seller was attending convention there, did not constitute the transaction of business in Illinois *such as would justify* Illinois in asserting jurisdiction in personam over seller." (Our italics).

The second head note preceding the Court's decision at 267 F. 2d 395, states that a meeting "*for purpose of discussing sale, arranged to be held* in Chicago *for convenience* in that seller was attending convention there, did not constitute transaction of business in Illinois *such as would justify* Illinois in asserting jurisdiction in personam over seller." (Our italics).

It is obvious from the statement in the official report of the Court's decision, and also from the Court's own statements in its opinion that the defendant "purposed" and intended to and did in fact conduct "*any* of the business" related to the cause of action when he came to Chicago, and that the Court of Appeals recognized that fact. It is clear that the basis of the Court's decision is that because defendant *also* "purposed" or "intended" to do something else in Chicago, that the business relating to the cause of action was transacted here as a matter of "convenience", and was, *therefore*, "wholly fortuitous", and was *consequently* not within the Illinois Statute.

It is highly improbable that any defendant in any case would spend two days in Chicago, where part of his time was occupied in "transacting business" related to a cause of action, and not, while he was there, do something else, such as talk to a friend, or see a ball game, or attend a theatre, or attend a convention. And, if such defendant were to testify that, before he went to the state, he

mentally had the "intention" or "purpose" of doing such other act, in addition to transacting the business related to the cause of action, so that it was "convenient" for him to transact the business related to the cause of action in Chicago at the same time, he would, under this decision, be completely exempt from the operation of the Illinois Statute, or the comparable Statute of any other state, so far as the jurisdiction of that state over him is concerned. In such case the "transaction of business" related to the cause of action in question, according to the Court's decision, would be "wholly fortuitous" and, *therefore*, not within the statute.

The above principle of law decided by the Seventh Circuit Court of Appeals in this case is in conflict with the decision of the Court of Appeals, Ninth Circuit, appearing in the same Advance Sheets in which this case is reported. In *Bush* v. *United States*, 267 F. 2d 483, the Ninth Circuit Court of Appeals held that even in a case where "purpose" or "intent" to act within the state is admittedly a jurisdictional requirement, that it is sufficient if such "purpose" and "intent" is one of the reasons, but not the only reason, for defendant to enter the state.

And in *Masse* v. *United States*, 210 F. 2d 418, the Fifth Circuit Court of Appeals held to the same effect, even where the "primary" purpose of defendant in entering the state was something other and different from the purpose required by Statute.

CONCLUSION.

We believe that the sole question on this petition is whether or not the decision of the Seventh Circuit Court of Appeals is to stand as a precedent, substantially modifying, and rendering largely ineffective the decision of this Court in *International Shoe Co. v. Washington*, 326 U.S. 310, and the Statutes of various states enacted pursuant thereto, by subjecting them to the totally new condition or qualification that they are inapplicable whenever a defendant initially has a purpose or intent to also do something in the state besides the purpose of there transacting the business related to the cause of action in question.

The decision of the Seventh Circuit Court of Appeals is in conflict with decisions of other U. S. Courts of Appeals and the Courts of last resort of several states. We believe it is inevitable that this decision will occasion substantial confusion, and further litigation unless and until it is reviewed by this Court.

Respectfully submitted,

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